Supreme Court, U.S.
FILED

No. 98 875 MAY 28 1998

OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term 1997

BEAUFORD D. EDDLETON,

Petitioner,

v.

BOARD OF SUPERVISORS OF HANOVER COUNTY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE VIRGINIA SUPREME COURT

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

I

Did the Trial Court err by dismissing the Petition for a Declaratory Judgment by failing to find that Eddleton had vested grandfather property rights?

II

Did the Trial Court err by not finding Hanover County Code 3-36 to be unconstitutionally vague, overbroad, discriminatory, arbitrary, capricious, and a violation of due process and equal protection rights of Eddleton?

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JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. 1257.

STATUTORY PROVISIONS INVOLVED

Amendments to the United States Constitution:

V. "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Beauford D. Eddleton (Eddleton) filed his Petition for a declaratory judgment in July, 1994. The Board of

Supervisors of Hanover County filed its Demurrer and Motion to Dismiss in August, 1994. After granting the County's Motion, Eddleton appealed.

The Virginia Supreme Court (Record Number 942116) reversed in Eddleton's favor (opinion October 20, 1995).

This case came before Hanover Circuit Court on June 13, 1997. The Court granted judgment for County and dismissed Eddleton's Petition by Order June 24, 1997. The Petition for Appeal was denied on December 16, 1997. The Petition to rehear was denied on February 27, 1998.

REASONS FOR GRANTING WRIT

Prior to hearing evidence, the Court received as Exhibits a sketch of the subject property, a Motion with attachment, the Hanover County Code Section 3-36, a letter from Mr. Berry dated June 28, 1994, and the Beach and Barbecue Music Party advertisement. The Court heard argument (Tr. P. 5 L. 24; P. 28 L. 25).

Eddleton purchased the subject property on Route 1 in Hanover County in 1950. Eddleton then went before Hanover Circuit Judge Bazile in 1950 for a permit to hold functions at a club which he was going to build called the Starlight. It was a dance hall permit under the State Code (Tr. P. 6 L. 11-13). The Court reviewed the old State Code (Tr. P. 6 L. 20-21). His purpose was to construct a building and hold functions in and outside his building. He has done that since 1950. A second dance hall permit was obtained before Judge Bazile in 1963 when the name was changed to the Jamaica Club.

Beginning in 1950, following approval of the permit, Eddleton built his building and pool on the property. Regular functions and parties occurred, musical and non-musical entertainment regularly occurred at the property.

In 1974, after the famous Woodstock Festival, County enacted its Music Festival Ordinance. Eddleton was

present when it was enacted and he spoke to Board member Carlton Jones. In 1980, County ordinance was changed to accommodate Kings Dominion, a theme park.

Eddleton received County letter in 1994 requiring him to get a permit under the ordinance. There have been no injuries over the years, and adequate security and toilet facilities existed.

Eddleton argued that he acquired certain vested grandfather rights beginning in 1950. He never abandoned his rights or changed the character of the functions at his property which were parties. He argued that the County adopted zoning regulations after 1950. He had a legitimate non-conforming use of the property with grandfather rights. He argued the Hanover County Ordinance 3-36 was unconstitutionally vague and that the ordinance was not intended to apply to his property. Eddleton questioned why Kings Dominion was exempt from the ordinance and he was not. He pointed out he had non-musical entertainment. He argued the law was overbroad. He pointed out that 3-36 mentions a recreational park. He was recently charged by the County for operating a commercial recreational facility. County wants both sides of the same issue.

County argued that Eddleton could not now claim vested rights because the old dance hall statute had been repealed. County argued that there was a distinction between zoning permits and outdoor music festival permits.

County argued there is reasonableness in administering the ordinance. It cited differences between Kings dominion, the Eddleton property, and a person with a guitar in a yard.

Court questioned whether Eddleton could claim rights since 1950. Under the dance hall permit awarded in 1950, Eddleton noted the Virginia case Stowe v. Amherst County Board of Zoning, 248 Va. 404 at 407 and 408. He noted in considering vested rights, the property owner must identify a significant government act that would permit the landowner to conduct use of his property that would

otherwise not be allowed, and that he's incurred substantial expense in good faith (Tr. P. 24 L. 9-13). He pointed out that the 3-36 requires open spaces. There are no open spaces on his property.

Court said, "We don't know whether Mr. Eddleton is in violation of anything unless he asks for a permit and they determine which permit he's asking for." Eddleton operated under Virginia Code 18-314 and he built his building and had parties under that Section. Eddleton pointed out that the County may simply not like him as he had difficulty with them before on other matters. –

Court inquired about the nature of Eddleton witness testimony. Eddleton listed witnesses and stated they would support all of his allegations and contentions. Mr. Christian, a former Deputy Sheriff for over twenty (20) years, would testify he was familiar with the ordinance, and parties at the property. He would testify as an expert that this ordinance would not apply to the property and he would not write any violation.

On direct, Eddleton's deed was offered as an Exhibit (Tr. P. 30 L. 13). So was his dance hall permit under Virginia Code Section 18-314 (Tr. P. 30 L. 19-22). The Statute was offered as an Exhibit. The Club was named the Starlight Club. The size was 2.165 acres. Eddleton still owns the property. After the permit, Eddleton built a Clubhouse facility and an outside patio. Arthur Murray dances and a band played on the patio regularly.

After reviewing a diagram, Eddleton identified the pool. He said it was built in 1952 or 1953. He said he had music festivals and reunions and "all kinds of parties there, hundreds of them" (Tr. P. 33 L. 13-14). Pool parties also regularly were held on the property. Wiffle ball and kick ball and "all types of activities within the acre." The area inside the fence around his property was "about an acre" (Tr. P. 33 L. 3-4). Functions were from "the early 50's on" and occurred often times more than once a week. A later permit

was sought when the name was changed to the Jamaica Club. That permit was an Exhibit.

All activities continued as before, after the new Jamaica Club permit was issued. He had been to Kings Dominion. He said "It's all open where they have music" (Tr. P. 36 L. 17-18). He said it would be 100's of acres.

Eddleton received the 1994 letter from Mr. Berry which indicated there would be prosecution if functions occurred without a County permit. He had never received such a letter from the County. He had maintained security. He had used the Sheriff's Deputies. He had toilet facilities which had health department approval for both the patio and Club. He had obtained A.B.C. approval for alcoholic beverages. He said he had no trouble on his property. He said "we run a tight ship."

Because of Berry's letter, and as a result of litigation regarding that letter, Eddleton filed his Petition in this case.

He recently received a criminal summons from the County. A copy was introduced. It mentioned a recreational facility. The ordinance uses remarkably similar language and refers to recreation park. The flyer (Exhibit) for the Beach and Barbecue Music Party was the basis of the Berry's letter.

Eddleton wanted the type of party described in that flyer as well as other similar parties (Tr. P. 40 L. 20-23). He had non-musical entertainment and served food on the property. He kept the pool open and games were played in the fenced area. He identified the enclosed patio area and where the band would have played. The entire function was to be in the enclosed area (Tr. P. 43 L. 1-5).

Eddleton was concerned that Kings Dominion could have functions and not apply for a permit. He noted that they hold the same type of functions only on a larger scale.

Eddleton had bingo games during the 70's and 80's. He said on non-bingo nights, he had other outside functions.

Eddleton used the pool continuously after it was built. He maintained the property. He denied any gaps in

the fencing. Day care centers used the pool during certain weekday hours. He rented for weddings and other functions. He had provisions for emergency medical services.

Eddleton attended the Board meeting in 1974 or 1975 when the ordinance was enacted. He was told that the County had complaints of college kids knocking down fences on farms. He was told (the ordinance) "it did not apply to me" (Tr. P. 51 L. 22) by Board member, Carlton Jones (Tr. p. 52 L. 1-4).

Robert Eddleton received the 1994 letter. He said no prior permit had ever been requested on the property. He took pictures of the property. They showed the condition of the property within a month of his testimony. He noted the fence, the pool and the area inside the fence as about an acre. He identified where the band would have played in 1994. He had seen other bands perform at the property in the past. The photographs were introduced.

Robert Eddleton, who is 43, remembered seeing many parties back in the 60's through the early 90's.

He noted that swimming, badminton, volleyball, and horseshoes were regular activities. He noted that badminton and volleyball are permanent facilities.

He had been to Kings Dominion and described it as about 250 acres. Kings Dominion had no music festival permit. He took pictures of Kings Dominion, showing the open area for concerts. He stated "they have a fence that looks similar to the height around our property," and only 200 to 500 maximum at the Jamaica Club. Kings Dominion also had non-musical entertainment. He said that day care functions at the Jamaica Club would not affect parties like the Beach and Barbecue Party (Tr. P. 68 L. 23-25 p. 26 L. 1).

John Thomas Mitchell was 81 years old. He had been to parties at the Club property regularly from 1962 or 1963. He was associated with Aretha Franklin. The pool was used and there was non-musical entertainment.

Oliver Christian had twenty (20) years in law enforcement with Richmond and Hanover Police

Departments. He attended functions at the Eddleton property. He remembered horseshoes, outdoor games and music. He had seen the ordinance and the advertisement for the July, 1994 Beach and Barbecue Festival. He had seen the fence and there were no open spaces in the property. He stated there was non-musical entertainment at the property.

County objected to Christian's testimony to whether the Beach party would have violated the ordinance. Christian said he would not have written a violation of the ordinance if the Beach and Barbecue party had been held. (Tr. P. 77 L. 8-23).

Hester Braxton was security manager since August, 1995 at Kings Dominion. He said the park was about 400 acres with an annual attendance of 2 million. It ran from March to Labor Day. It had rides, food facilities, and small show venues. He said there were restrooms and an amphitheater which seats 3000 to 5000. There was an on-site staff for EMT's, paramedics, cardiac technicians, and a security staff.

He said the concerts were in an open area with a fence around it. They had four or five functions a year. He said that many came for the concerts. He said it would be "hundreds. It could be more," who came just for the concerts and some left immediately after the concerts.

Betty Ackerman, the secretary for the Hanover County Administrator, said that ten (10) permits had been issued for music festivals in the last year. This was objected to as being not relevant. She said that the Hanover Ruritan Bull Roast had not applied for an outdoor festival permit.

Ernest Brian Bolt is a zoning inspector for Hanover County. He drew the sketch of the Jamaica Club property.

Robert Eddleton had attended Hanover Courthouse Ruritan Bull Roast parties. The parties were held on a fifteen to twenty acre tract. He observed dancing and bands. He identified a flyer and pictures (Exhibits) showing the Courthouse Ruritan Club 28th Annual Bull Roast on Tuesday, May 13, 1997, which was typical of what he had

observed there over the years. The pictures showed a large open area. There was musical entertainment and about 500 people present. The Bull Roast had no music festival permit, and was much larger than Eddleton's (Tr. P. 91 L. 12-18).

Court heard from counsel and made several comments before dismissing the suit. The Court said "I can't say whether or not he's in violation of the ordinance because truthfully in talking to the staff over there, and particularly the County attorneys, he wants to operate full time" (Tr. P. 105 L. 12-16).

The Court ruled the ordinance was not faulty in any way (Tr. P. 104 L. 25 P. 105 L. 1). The Court said, "I do question whether it's being applied properly or not in this situation" (Tr. P. 105 L. 1-2).

The Court said, "I certainly can't say that you're in violation of any law because I don't know what the law is" (Tr. P. 105 L. 23-25).

Eddleton argues that his Petition and the evidence in this case state an actual antagonistic assertion and denial of right under the provisions of Virginia Code Section 8.01-184, Board of Supervisors v. Rowe, 216 Va. 128, 132, 216 S.E.2d 199, 204-05 (1975).

The Trial Court said Eddleton had to apply for a permit or something before his rights could be established. And he had to be regulated once established.

Eddleton disagrees. His position is he need not apply for a permit because he has vested rights. Hanover County Code Section 3-36 is vague, overbroad, arbitrary, capricious, and discriminatory. This is true both on its face and enforcement. He argues that from a factual basis, he is not in violation of the Ordinance. The Code also was not intended to apply to his property. It was for a Woodstock type open field party with thousands of party goers.

Eddleton proved vested grandfather rights since 1950. He purchased his property in 1950. He obtained a dance hall permit at which time it was fully discussed that he would be holding inside and outside functions. He built his

building, the pool, and all the outside patio facilities. He was never precluded from doing other lawful activities at his property. He was granted approval to have the functions which would otherwise not have been lawful. The elements of Stowe v. Amherst County Board of Zoning, 248 Va. 404 at 407 are fully satisfied to obtain vested rights.

His activities were not questioned for 44 years until 1994. He has acquired rights in what is in essence a grandfathered vested nonconforming use. The Circuit Court in 1950 exercised the governmental power to have set in motion his good faith construction of his property, pool and facilities. The undisputed testimony established his longstanding practice of having periodic party functions.

The test to determine whether a law is constitutionally vague is set forth in the landmark case of Richard Grayned v. City of Rockford, 408 U.S. 104 33 L.E.2d 222, 295 Ct 2294 (1972). It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined, USCA Amendment 14, Grayned, supra.

Vague law offend several important values: first, vague laws may trap the innocent by not providing fair warning; second, vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis with attendant dangers of arbitrary and discriminatory application, USCA Amendment 14, Grayned, supra. A law must give the person or ordinary intelligence a reasonable opportunity to know what is prohibited so he may act accordingly, USCA Amendment 14, Grayned, supra. If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them, USCA Amendment 14, Grayned, supra. A clear and precise enactment may nevertheless be overbroad if in its reach it prohibits constitutionally protected conduct, USCA Amendment 14, Grayned, supra. Hanover County Code Section 3-36 violates the above applicable law.

Eddleton was confused. He attended the Board meeting in 1974 to see if the law applied to his property. He was told it did not. Eddleton argued Grayned to the Trial Court. He argued the vagueness test. He pointed out on Page 95 of the Trial transcript, Line 22, the code uses the following confusing terms "gathering", "group of individuals", "primarily music renditions", "conducted in open spaces" and, "not within an enclosed structure". What do those terms mean? No meaningful definition is provided. In addition, there is the confusing language "conducted within the confines of a family theme or recreation park" (Tr. P. 95 L. 19 Tr. P. 96 L. 8).

An ordinance of a regulatory nature must be clear, certain, and definite", Wiley v. County of Hanover, 209 Va. 153, 163 S.E.2d 160 (1968) (Hanover County Zoning Ordinance), Tinsley v. Richmond, 202 Va. 707, 119 S.E.2d 488, Pederson v. City of Richmond, 219 Va. 1061, 254 S.E.2d 95 (1979), Richmond-Ashland v. Commonwealth, 162 Va. 296 173 S.E. 892 (1934), Pence v. Bryant, 54 W. Va. 263, 46 S.E. 275 (1903), Potomac Greens Assoc. Partnership v. City Council, 761 F. Supp. 416 E.D. Va. (1991).

The "judicial branch has the authority to declare the legislative acts void if they are non-uniform in their operation", Town of Narrows, v. Clear-View Cable TV, Inc., 227 Va. 272, 315 S.E. 835 (1984).

Eddleton argues that how can Kings Dominion, with many more people attending functions and concerts in a large open area, be treated differently. The fence is of similar height to Eddleton's fence. Hanover County Code 3-36 does not by name provide an exemption for Kings Dominion with millions of annual visitors where they sometimes have to bring in extra security for concerts. Is the County concerned with the health of people at the functions or just simply giving a sweetheart deal for a fat cat, corporate tax payers?

The Hanover Courthouse Ruritan Bull Roast function does not hold a permit for its functions. This is just another privileged group that the law does not apply to! This non-uniform enforcement practice is wrong, evil, arbitrary, capricious, discriminatory, and it violated Eddleton's due process and equal protection rights.

The Hanover County Code 3-36 is overbroad. The County's position about selected enforcement of open air musical festival parties in someone's backyard raises many troubling questions. Just because Hanover County may elect not to charge someone with a guitar in his backyard, does not excuse the fact that the law is overbroad.

If the law is constitutional, Eddleton argues that it was never intended to apply to him. The alleged evil that Supervisor Carlton Jones told him about, had, by the Supervisor's own words, no application to him.

The Trial Court heard evidence that his property is not in violation of the ordinance. This is for several reasons including the fact that there is a swimming pool and operation there. All the requirements of the code are met, and there never has been an open space or field at his property as contemplated by the 1974 Board.

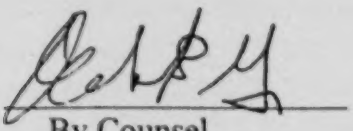
The Trial Court's many errors may be explained by what the Trial Court said, "truthfully in talking to the staff over there and particularly including the County attorneys" (Tr. P. 105 L. 14-15). Has the Court admitted to discussion which has unfairly prejudiced Eddleton's rights?

All of the rulings of the Court are in error because they violate Eddleton's 5th and 14th Amendment rights (property, due process and equal protection).

CONCLUSION

A writ of Certiorari should be awarded.

BEAUFORD D. EDDLETON



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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on December 16, 1997.

BEAUFORD D. EDDLETON,

Appellant,

against Record No. 971989
Circuit Court No. CH 289-94

BOARD OF SUPERVISORS OF
HANOVER COUNTY,

Appellee.

Upon a Petition for Appeal

On consideration of the petition of the appellant and the argument submitted, in support in opposition to the petition, the Court finds no reversible error and denies the petition.

A copy,

Teste: David Beach
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 27th day of February, 1998.

BEAUFORD D. EDDLETON,
Appellant,

against Record No. 971989
Circuit Court No. CH 289-94

BOARD OF SUPERVISORS OF
HANOVER COUNTY,
Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 17th day of December, 1997 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste: David Beach,
Clerk

ARTICLE III. OUTDOOR MUSICAL OR ENTERTAINMENT FESTIVALS

DIVISION 1. GENERALLY

Sec. 3-36. Definition.

For the purposes of this article, the term "musical or entertainment festival" or "festival" shall mean and include any gathering of groups or individuals for the purpose of listening to or participating in entertainment which consists primarily of musical renditions conducted in open spaces not within an enclosed structure; provided, however, that any such gathering conducted within the confines of a family theme or recreation park, wherein non-musical entertainment is provided on a regular basis, shall not be considered a "musical or entertainment festival" within the meaning hereof.

(Code 1964, & 10A-2; Ord. No. 80-15, & 1, 6-25-80)

VIRGINIA:

In the Circuit Court of Hanover County

BEAUFORD D. EDDLETON,
Plaintiff,

v.

BOARD OF SUPERVISORS OF
HANOVER COUNTY,
Defendant.

SERVE: Sterling Rives, Hanover County
Attorney, Hanover, Virginia 23069

PETITION FOR A DECLARATORY JUDGMENT

NOW COMES Beauford Eddleton, by counsel, and he offers as follows:

1. He is the owner of Hanover County property known as Route 8 Box 1185, Ashland, Virginia 23005 known as the Jamaica Country Club. He has lost revenue based on the Court's initial Order dated July 7, 1994, in a recent case which has also placed in question his property rights.

2. He has serious concerns regarding the County's position in that a music festival permit is needed to conduct events on his property. He disagrees with the position taken by the County, and, he petitions the Court for a declaratory judgment for the Court to determine if he can continue to have the same type of events on his property he has had for many years. He alleges an actual controversy with the county because his rights based on the principals of laches, estoppel, grandfather rights, his rights established by his dance hall permit, and the applicability of the Hanover County Music Festival Ordinance to his property. He

believes he is not in violation of the Ordinance to hold events just like the one which was cancelled by the County under threat of prosecution.

3. The County's Music Festival Ordinance is discriminatory, arbitrary, vague, overbroad, capricious, violates due process and equal protection constitutional rights of the Plaintiff, and, has cost the Plaintiff income and financial losses.

BEAUFORD EDDLETON

/s/_____
By Counsel

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